

**MINUTES FOR THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

September 17, 2002

DIVISION ONE

B145982	Peoplev. Wilkinson	(Certified for Partial Publication)
B154520	In re Wilkinson on Habeas Corpus	

In the appeal, we reverse Wilkinson's felony conviction under section 243.1. We vacate Wilkinson's two misdemeanor convictions and remand for the trial court to conduct a *Kelly/Leahy* hearing to determine the admissibility of Wilkinson's proffered polygraph evidence.

In the habeas petition, we issue an order to show cause returnable before the trial court. The court is to conduct an evidentiary hearing and rule on the merits of Wilkinson's in competency of trial counsel allegations.

First, the court is to conduct the habeas petition hearing. If the court grants the petition, entitling Wilkinson to a new trial, the court then is to conduct the *Kelly/Leahy* hearing to determine if Wilkinson's polygraph evidence is admissible at the new trial, at which Wilkinson can be tried for violating section 243, subdivision (c)(1), or 243, subdivision (b), and the two misdemeanors vacated above.

Alternatively, if the court denies the habeas petition, it then is to conduct the *Kelly/Leahy* hearing. If the court concludes the evidence is inadmissible, the court is to reinstate the two misdemeanor convictions vacated above, and conduct a new trial on the section 243, subdivision (c)(1) or 243, subdivision (b) charge. If the court concludes the polygraph evidence is admissible, the court is to grant Wilkinson a new trial on the section 243, subdivision (c)(1) or section 243, subdivision (b) charge, and the two misdemeanors vacated above, at which the polygraph evidence will be admitted.

Ortega, J.

I concur: Spencer, P.J.

I concur & dissent: Mallano, J. (opinion)

September 17, 2002 (Continued)

DIVISION ONE (Continued)

B154755 People (Not for Publication)
v.
Jones

The judgment is affirmed.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.
Mallano, J.

B142410 Haase, et al.
v.
Ellenburg Capital Corp., Inc.

Filed order granting motion to dismiss appeal. Appeal (notice of appeal filed April 27, 2000, May 15, 2000, June 21, 2000 and December 29, 2000 by Ellenburg Fund 20) dismissed.

DIVISION THREE

Court convened at 9:30 A.M.

Present: Klein, P.J., Croskey, J., Kitching, J., Aldrich, J. and M. Gavinski, Deputy Clerk.

Each of the following:

B150938 Donfeld v. Bass
B150342 People v. Hernandez
B153931 People v. Weldon
B156576 People v. Lopez
B155206 People v. Sanchez
B153059 People v. Barron
B152859 People v. Demery
B154138 People v. Erickson

Argument waived, cause submitted.

DIVISION THREE (Continued)

B151219 Edgar Mosely
 v.
 First USA Bank

Merits:
Argued by Edgar, Mosely, appellant in propria persona and by Gary
Gorham for respondent. Cause submitted.

B156438 Honeywell, etc.
 v.
 Workers Compensation Appeals Board
 William Wagner, Respondent

Merits:
Argued by D'Arcy T. Swartz for petitioner, by Florette Turchin and David
A. Rosen for respondent and by Ronald Kollitz and James C. Hester for
amicus curiae. Cause submitted.

B149092 Coalition of Concerned Communities, Inc., et al.
 v.
 City of Los Angeles

Merits:
Argued by Craig A. Sherman for appellants and by Robert D. Crockett for
respondents. Cause submitted.

B155223 Atlantic Mutual Insurance Co., et al.
 v.
 J. Lamb, Inc., et al.

Merits:
Argued by M. Danton Richardson for appellants and by Jared Beeson for
respondents. Cause submitted.

Court recessed at 12:00 P.M.

September 17, 2002 (Continued)

DIVISION THREE (Continued)

Court reconvened at 1:30 P.M.

Present: Croskey, Acting P.J., Kitching, J., Aldrich, J. and M. Gavinski, Deputy Clerk.

B146611 Willi Foster
v.
The Boeing Company, et al.

Merits:
Argued by Norma A. Dawson for appellant and by Barbara Ellen Johnson for respondents. Cause submitted.

Court adjourned at 2:00 P.M.

DIVISION FOUR

B156664 Gervarter (Not for Publication)
v.
Maple Ridge Mobile Homes, Inc.

The judgment is reversed, with directions that the trial court overrule the demurrer on remand. Respondent's motion for sanctions is denied. Costs on appeal are awarded to appellant.

Hastings, J.

We concur: Vogel (C.S.), P.J.
Curry, J.

DIVISION FIVE

B152737 People (Not for Publication)
v.
Mark Houston

The superior court clerk is directed to correct the abstract of judgment to reflect the sentences imposed and stayed in counts 2 and 3, as well as defendant's presentence credits, including 157 actual days and 78 days of work time credit. The judgment is affirmed in all other respects.

Turner, P.J.

We concur: Grignon, J.
Armstrong, J.

September 17, 2002 (Continued)

DIVISION SIX

B154454 People v. Bartley (Not for Publication)

The judgment is affirmed.

Coffee, J.

We concur: Yegan, Acting P.J.
Perren, J.

B151323 People (Not for Publication)
v.
Battiste

The People did not carry their burden of proving the warrantless search was reasonable under the circumstances. (*People v. Williams* (1999) 20 Cal.4th 119, 130.) The judgment is reversed with directions to dismiss. (*People v. Dickey* (1994) 21 Cal.App.4th 952, 957.)

Coffee, J.

We concur: Yegan, Acting P.J.
Perren, J.

DIVISION SEVEN

B152101 Erlich (Not for Publication)
v.
Daleco Resources Corp.

The order dismissing the cross-complaint is modified to state that the dismissal is without prejudice; as so modified the order of dismissal is affirmed. The parties are to bear their own costs on appeal.

Lillie, P.J.

We concur: Johnson, J.
 Perluss, J.

September 17, 2002 (Continued)

DIVISION SEVEN (Continued)

B149493 MRG Entertainment, Inc. (Not for Publication)
v.
Dean Hamilton Entertainment Inc., et al.

The judgment is affirmed. Respondent(s) to recover costs.

Lillie, P.J.

We concur: Johnson, J.
 Woods, J.

[illegible]

The judgment is affirmed. Respondent(s) to recover costs.

Lillie, P.J.

We concur: Woods, J.
Perluss, J.

B155757 Los Angeles County, D.C.S. (Not for Publication)
v.
Bettye A. and Pamela J.

The judgment is affirmed.

Lillie, P.J.

We concur: Woods, J.
Perluss, J.

September 17, 2002 (Continued)

DIVISION SEVEN (Continued)

B154549 People (Not for Publication)
v.
Gebran

The judgment is affirmed.

Lillie, P.J.

We concur: Woods, J.
Perluss, J.

B151238 Sarah Ann Adams, et al. (Not for Publication)
v.
Tabor-Smith, et al.

The judgment is affirmed. Respondent(s) to recover costs.

Perluss, J.

We concur: Lillie, P.J.
Woods, J.

B142067 King (Not for Publication)
v.
Charter Communications, et al.

The judgment is affirmed. Each party to bear their own costs.

Perluss, J.

We concur: Lillie, P.J.
Woods, J.

DIVISION SEVEN (Continued)

[illegible]

The judgment is modified to reflect a sentence of 30 years plus life by striking the term imposed pursuant to Penal Code section 186.22, subdivision (b)(1) and noting a 45-year minimum parole eligibility date instead, and to reflect an award of 26 days' pre-sentence conduct credit, for a total of 205 days pre-sentence credits. As modified the judgment is affirmed. The superior court is directed to prepare an amended abstract of judgment consistent with this disposition.

Lillie, P.J.

We concur: Johnson, J.
 Woods, J.

[illegible]

We will remand the cause to the superior court for its clerk to prepare an amended abstract of judgment accurately reflecting the sentence imposed by the court and send it to the California Department of Corrections. The judgment is affirmed.

Lillie, P.J.

We concur: Johnson, J.
 Perluss, J.

B153770 People (Not for Publication)
v.
Veltrop

The judgment is affirmed.

Lillie, P.J.

We concur: Woods, J.
Perluss, J.

DIVISION SEVEN (Continued)

B141387 Merriman (Not for Publication)
 v.
 Park

The judgment is affirmed. Each party to bear their own costs.

Johnson, J.

We concur: Lillie, P.J.
 Perluss, J.

B150425 Hanna (Not for Publication)
 v.
 Los Angeles County Sheriff's Department

The judgment is affirmed. Respondent(s) to recover costs.

Johnson, J.

We concur: Lillie, P.J.
 Woods, J.

B155289 Reliance National Ins. Corp. (Not for Publication)
 v.
 W.C.A.B.
 Singleton

The decision is annulled and the matter is remanded for further proceedings consistent with this opinion.

Johnson, Acting P.J.

We concur: Woods, J.
 Perluss, J.

DIVISION SEVEN (Continued)

B150891 Hansen (Not for Publication)
v.
Patel

The portion of the judgment awarding damages to defendant and cross-complainant Nitin Patel from plaintiff and cross-defendant Brent Hansen is reversed. In all other respects the judgment is affirmed. Hansen is awarded his costs on appeal from Patel. Respondent Kenneth Hanson is to bear his own costs on appeal.

Johnson, Acting P.J.

We concur: Woods, J.
Perluss, J.

B151530 Ching-Ting Lan (Not for Publication)
v.
Tsu

The judgment is modified to order Lawrence Tsu also known as Hontrium Tsu to pay Ching Ting Lan the sum of \$24,315.74 plus interest at the legal rate from October 13, 1999 plus one fourth of Lan's costs of suit and to order Alex Liu also known as Hsueh Su Liu to pay Ching Ting Lan damages in the sum of \$24,315.74 plus interest at the legal rate from October 13, 1999 plus one fourth of Lan's costs of suit. In all other respects the judgment is affirmed. Lan is awarded his costs on appeal.

Johnson, J.

We concur: Lillie, P.J.
Woods, J.

B153532 Ruiz (Not for Publication)
v.
Mendoza

The judgment is reversed and the matter is remanded to the trial court with directions to vacate its order sustaining the demurrer to the first amended complaint and to enter a new and different order overruling the demurrer. Appellant is awarded his costs on appeal.

Johnson, J.

We concur: Lillie, P.J.
Perluss, J.

September 17, 2002 (Continued)

DIVISION SEVEN (Continued)

B156994 People (Not for Publication)
v.
Baker

The judgment is affirmed.

Johnson, J.

We concur: Lillie, P.J.
Perluss, J.

B152886 People (Not for Publication)
v.
Haro

The judgment is affirmed.

Johnson, J.

We concur: Lillie, P.J.
Woods, J.

B154631 Nourmand
v.
City of Los Angeles, et al.

Filed order denying petition for rehearing.

B151560 Southern California Edison
v.
Public Utilities Commission
Caithness Energy, R.P.I.

B151560 Caithness Energy, R.P.I.
v.
Public Utilities Commission
Southern California Edison

Filed order denying Caithness Energy's petition for rehearing.